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SENATE BILL 413

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

John Arthur Smith

AN ACT

RELATING TO TAXATION; CREATING FILING AND PAYMENT REQUIREMENTS
FOR GASOLINE AND SPECIAL FUEL RETAILERS AND WHOLESALERS;
PROVIDING A PENALTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Tax Administration Act is
enacted to read:

"~~[NEW MATERIAL]~~ CIVIL PENALTY FOR FAILURE TO FILE AN
INFORMATION RETURN.--A taxpayer who fails to file an
information return on time pursuant to the Gasoline Tax Act or
the Special Fuels Supplier Tax Act shall pay a penalty of fifty
dollars (\$50.00) for each late report. This penalty shall be
in addition to other applicable penalties."

Section 2. Section 7-1-13.1 NMSA 1978 (being Laws 1988,
Chapter 99, Section 3, as amended) is amended to read:

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1 "7-1-13.1. METHOD OF PAYMENT OF CERTAIN TAXES DUE.--

2 A. Payment of the taxes, including any applicable
3 penalties and interest, described in Paragraph (1), (2) ~~[or]~~,
4 (3) or (4) of this subsection shall be made on or before the
5 date due in accordance with Subsection B of this section if the
6 taxpayer's average tax payment for the group of taxes during
7 the preceding calendar year equaled or exceeded twenty-five
8 thousand dollars (\$25,000):

9 (1) Group 1: all taxes due under the
10 Withholding Tax Act, the Gross Receipts and Compensating Tax
11 Act, local option gross receipts tax acts, the Interstate
12 Telecommunications Gross Receipts Tax Act and the Leased
13 Vehicle Gross Receipts Tax Act;

14 (2) Group 2: all taxes due under the Oil and
15 Gas Severance Tax Act, the Oil and Gas Conservation Tax Act,
16 the Oil and Gas Emergency School Tax Act and the Oil and Gas Ad
17 Valorem Production Tax Act; ~~[or]~~

18 (3) Group 3: the tax due under the Natural
19 Gas Processors Tax Act; or

20 (4) Group 4: all taxes and fees due under the
21 Gasoline Tax Act, the Special Fuels Supplier Tax Act and the
22 Petroleum Products Loading Fee Act.

23 For taxpayers who have more than one identification number
24 issued by the department, the average tax payment shall be
25 computed by combining the amounts paid under the several

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1 identification numbers.

2 B. Taxpayers who are required to make payment in
3 accordance with the provisions of this section shall make
4 payment by one or more of the following means on or before the
5 due date so that funds are immediately available to the state
6 on or before the due date:

7 (1) electronic payment; provided that a result
8 of the payment is that funds are immediately available to the
9 state of New Mexico on or before the due date;

10 (2) currency of the United States;

11 (3) check drawn on and payable at any New
12 Mexico financial institution provided that the check is
13 received by the department at the place and time required by
14 the department at least one banking day prior to the due date;
15 or

16 (4) check drawn on and payable at any domestic
17 non-New Mexico financial institution provided that the check is
18 received by the department at the time and place required by
19 the department at least two banking days prior to the due date.

20 C. If the taxes required to be paid under this
21 section are not paid in accordance with Subsection B of this
22 section, the payment is not timely and is subject to the
23 provisions of Sections 7-1-67 and 7-1-69 NMSA 1978.

24 D. For the purposes of this section, "average tax
25 payment" means the total amount of taxes paid with respect to a

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1 group of taxes listed under Subsection A of this section during
2 a calendar year divided by the number of months in that
3 calendar year containing a due date on which the taxpayer was
4 required to pay one or more taxes in the group."

5 Section 3. A new section of the Gasoline Tax Act is
6 enacted to read:

7 "[NEW MATERIAL] RETURNS BY RETAILERS--REQUIREMENTS--
8 EXCEPTION.--

9 A. Retailers shall file information returns in form
10 and content as prescribed by the department on or before the
11 twenty-fifth day of the month following the month in which
12 gasoline is sold in New Mexico.

13 B. A retailer is not required to file a return if
14 the retailer is one hundred percent owned by a distributor that
15 files a return pursuant to Section 7-13-5 NMSA 1978."

16 Section 4. Section 7-16A-2 NMSA 1978 (being Laws 1992,
17 Chapter 51, Section 2, as amended) is amended to read:

18 "7-16A-2. DEFINITIONS.--As used in the Special Fuels
19 Supplier Tax Act:

20 A. "bulk storage" means the storage of special
21 fuels in any tank or receptacle, other than a supply tank, for
22 the purpose of sale by a dealer or for use by a user or for any
23 other purpose;

24 B. "bulk storage user" means a user who operates,
25 owns or maintains bulk storage in this state from which the

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1 user places special fuel into the supply tanks of motor
2 vehicles owned or operated by that user;

3 C. "dealer" means any person who sells and delivers
4 special fuel to a user;

5 D. "department" means the taxation and revenue
6 department, the secretary of taxation and revenue or any
7 employee of the department exercising authority lawfully
8 delegated to that employee by the secretary;

9 E. "government-licensed vehicle" means a motor
10 vehicle lawfully displaying a registration plate, as defined in
11 the Motor Vehicle Code issued by:

12 (1) the United States or any state,
13 identifying the motor vehicle as belonging to the United States
14 or any of its agencies or instrumentalities;

15 (2) the state of New Mexico, identifying the
16 vehicle as belonging to the state of New Mexico or any of its
17 political subdivisions, agencies or instrumentalities; or

18 (3) any state, identifying the motor vehicle
19 as belonging to an Indian nation, tribe or pueblo or an agency
20 or instrumentality thereof;

21 F. "gross vehicle weight" means the weight of a
22 motor vehicle or combination motor vehicle without load, plus
23 the weight of any load on the vehicle;

24 G. "highway" means every road, highway,
25 thoroughfare, street or way, including toll roads, generally

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1 open to the use of the public as a matter of right for the
2 purpose of motor vehicle travel and notwithstanding that the
3 same may be temporarily closed for the purpose of construction,
4 reconstruction, maintenance or repair;

5 H. "motor vehicle" means any self-propelled vehicle
6 or device that is either subject to registration pursuant to
7 Section 66-3-1 NMSA 1978 or is used or may be used on the
8 public highways in whole or in part for the purpose of
9 transporting persons or property and includes any connected
10 trailer or semitrailer;

11 I. "person" means an individual or any other
12 entity, including, to the extent permitted by law, any federal,
13 state or other government or any department, agency,
14 instrumentality or political subdivision of any federal, state
15 or other government;

16 J. "rack operator" means the operator of a refinery
17 in this state, any person who blends special fuel in this state
18 or the owner of special fuel stored at a pipeline terminal in
19 this state;

20 K. "registrant" means any person who has registered
21 a motor vehicle pursuant to the laws of this state or of
22 another state;

23 L. "sale" means any delivery, exchange, gift or
24 other disposition;

25 M. "secretary" means the secretary of taxation and

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1 revenue or the secretary's delegate;

2 N. "special fuel" means diesel-engine fuel or
3 kerosene used for the generation of power to propel a motor
4 vehicle;

5 O. "special fuel user" means any user who is a
6 registrant, owner or operator of a motor vehicle using special
7 fuel and having a gross vehicle weight in excess of twenty-six
8 thousand pounds;

9 P. "state" or "jurisdiction" means a state,
10 territory or possession of the United States, the District of
11 Columbia, the commonwealth of Puerto Rico, a foreign country or
12 a state or province of a foreign country;

13 Q. "supplier" means any person, but not including a
14 rack operator or the United States or any of its agencies
15 except to the extent now or hereafter permitted by the
16 constitution of the United States and laws thereof, who
17 receives special fuel;

18 R. "supply tank" means any tank or other receptacle
19 in which or by which fuel may be carried and supplied to the
20 fuel-furnishing device or apparatus of the propulsion mechanism
21 of a motor vehicle when the tank or receptacle either contains
22 special fuel or special fuel is delivered into it;

23 S. "tax" means the special fuel excise tax imposed
24 pursuant to the Special Fuels Supplier Tax Act; ~~and~~

25 T. "user" means any person other than the United

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1 States government or any of its agencies or instrumentalities;
2 the state of New Mexico or any of its political subdivisions,
3 agencies or instrumentalities; or an Indian nation, tribe or
4 pueblo or any agency or instrumentality of an Indian nation,
5 tribe or pueblo, who uses special fuel to propel a motor
6 vehicle on the highways; and

7 U. "wholesaler" means a person who is not a
8 supplier and who sells special fuel in quantities of thirty-
9 five gallons or less and delivers special fuel into the supply
10 tanks of motor vehicles."

11 Section 5. A new section of the Special Fuels Supplier
12 Tax Act is enacted to read:

13 "[NEW MATERIAL] RETURNS BY WHOLESALERS.--Wholesalers shall
14 file information returns in form and content as prescribed by
15 the department on or before the twenty-fifth day of the month
16 following the month in which special fuel is sold in New
17 Mexico. Sales of special fuel dyed in accordance with federal
18 standards are not wholesale sales for the purposes of this
19 section, and information returns on those sales need not be
20 filed with the department."